

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ALEATRICE THOMAS,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. 1:20-cv-01758-SAB

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSING ACTION
AS DUPLICATIVE AND DENYING
PLAINTIFF'S MOTION TO PROCEED *IN*
FORMA PAUPERIS AS MOOT

ORDER DIRECTING OFFICE OF THE
CLERK TO RANDOMLY ASSIGN
DISTRICT JUDGE

(ECF Nos. 1, 2)

On December 11, 2020, Plaintiff Aleatrice Thomas filed this action appealing the final decision of the Commissioner of Social Security's denial of Social Security benefits. Along with the complaint, Plaintiff filed a motion to proceed *in forma pauperis*. Upon review of the complaint, the Court finds that it is identical to the complaint filed on December 7, 2020, in Thomas v. Commissioner of Social Security, No. 1:20-cv-01723-SAB (E.D. Cal.).

The Court has the inherent power to control its docket and may, in the exercise of that power, impose sanctions where appropriate, including dismissal of the action. Adams v. California Dep't of Health Servs., 487 F.3d 684, 688 (9th Cir. 2007) overruled on other grounds by Taylor v. Sturgell, 553 U.S. 880 (2008); Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000). The district court has the discretion "to dismiss a duplicative later-filed action,

to stay that action pending resolution of the previously filed action, to enjoin the parties from proceeding with it, or to consolidate both actions.” Adams, 487 F.3d at 688. Generally, a plaintiff has “no right to maintain two separate actions involving the same subject matter at the same time in the same court and against the same defendant.” Adams, 487 F.3d at 688 (citations omitted). Dismissal of the duplicative action promotes judicial economy and “comprehensive disposition of litigation.” Id. at 692. “It is well established that a district court has broad discretion to control its own docket, and that includes the power to dismiss duplicative claims.” M.M. v. Lafayette Sch. Dist., 681 F.3d 1082, 1091 (9th Cir. 2012).

In both this action and in Thomas v. Commissioner of Social Security, No. 1:20-cv-01723-SAB (E.D. Cal., Plaintiff is seeking judicial review of the Commissioner of Social Security’s denial of disability insurance benefits and supplemental security income dated September 20, 2020. Both actions are against the same defendant; the complaints include identical allegations; and are signed on the same date. In each case Plaintiff has sought leave to proceed *in forma pauperis*. “[L]awsuits filed by a plaintiff proceeding *in forma pauperis* are subject to dismissal as either frivolous or malicious under 28 U.S.C. § 1915(e).” Jones v. Lewis Cty. City of Chehalis, No. C20-5048-RBL-TLF, 2020 WL 3052339, at *1 (W.D. Wash. May 1, 2020), report and recommendation adopted, No. C20-5048RBL, 2020 WL 3050139 (W.D. Wash. June 8, 2020) (citations omitted). Further, “[r]epetitious litigation of virtually identical causes of action is subject to dismissal under 28 U.S.C. § 1915(d) as malicious.” Bailey v. Johnson, 846 F.2d 1019, 1021 (5th Cir. 1988). The Court does not abuse its discretion where it dismisses a complaint under § 1915(d) “that merely repeats pending or previously litigated claims. Cato v. United States, 70 F.3d 1103, 1105 n. 2 (9th Cir. 1995).

The Court finds that this action is duplicative of Thomas v. Commissioner of Social Security, No. 1:20-cv-01723-SAB (E.D. Cal.) which is currently pending before the undersigned.

Accordingly, IT IS HEREBY RECOMMENDED that:

1. This action be DISMISSED as duplicative of Thomas v. Commissioner of Social Security, No. 1:20-cv-01723-SAB (E.D. Cal.); and
2. Plaintiff’s application to proceed *in forma pauperis* be DENIED as moot.

1 The Clerk of the Court is DIRECTED to randomly assign a district judge to this action.

2 This findings and recommendations is submitted to the district judge assigned to this
3 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 304. Within **thirty (30)**
4 **days** of service of this recommendation, Plaintiff may file written objections to this findings and
5 recommendations with the court. Such a document should be captioned "Objections to
6 Magistrate Judge's Findings and Recommendations." The district judge will review the
7 magistrate judge's findings and recommendations pursuant to 28 U.S.C. § 636(b)(1)(C).
8 Plaintiff is advised that failure to file objections within the specified time may result in the
9 waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing
10 Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

11 IT IS SO ORDERED.

12
13 Dated: **December 15, 2020**


UNITED STATES MAGISTRATE JUDGE